

Program Description

A. Program Description

Type of Approval Requested

The Puerto Rico Department of Natural and Environmental Resources (DNER) is requesting **final** approval for a **complete** underground storage tank (UST) program regulating both petroleum and hazardous substance UST systems.

B. Program Scope

The DNER has adopted the Federal regulations by reference, so the scope is similar to that of the Federal government's. The DNER program does not differ from the Federal program. DNER scope is a set of rules that shall be known as the Regulation for the Control of Underground Storage Tanks (RCUST). It is enacted pursuant to the Environmental Public Policy Act, Act No. 416-2004, as amended and constitutes the rules of the Environmental Quality Board of the Commonwealth of Puerto Rico, for installations with Underground Storage Tank Systems (UST).

UST Program Statistics

As of September 2018, the total DNER-regulated UST population includes the following facilities and systems:

Total regulated UST facilities (active)	1,467
Total regulated UST facilities (closed)	118
Total regulated UST facilities (abandoned)	77

C. Organization and Structure of State Program

The DNER is the lead agency for facilitating communications between the U.S. Environmental Protection Agency (EPA) and the Government of Puerto Rico. The DNER is the only government agency that implements the UST program. The DNER purpose is promulgated to comply with the following purposes:

1. To promote the necessary compliance of facilities with UST Systems;
2. To implement a permit system and requirements for the installation, operation and closure of facilities with UST Systems; and
3. To protect health, public safety and the environment of the Commonwealth of Puerto Rico, ensuring a sound management of the UST Systems, by preventing, controlling, remedying or mitigating the current or potential contamination of soil, surface and ground water bodies.

Within the DNER, the Division for the Control of Underground Storage Tank (DCUST) is responsible for the following tasks:

- Creating and amending regulations and guidance's

- Developing policies
- Managing EPA assistance grants
- Issuing enforcement orders
- Maintaining enforcement records
- Managing the LUST List
- Conducting field inspections related to complaints
- Performing follow-up on reported confirmed releases
- Providing owners and operators with comments on LUST site issues
- Training, Examination and Certification for UST Class A, B and C Operators
- Compliance inspections
- Performing follow-up compliance inspections
- Overseeing tank installations
- Overseeing tank closures
- Overseeing and reviewing LUST site information
- Overseeing and approving LUST investigation and corrective action plans
- Overseeing site cleanups based on corrective action plans
- Responding to public complaints
- Responding to public records requests
- Recording performance measures
- Supporting regional offices
- Managing the UST database
- Setting the general direction of the UST program

The DNER has the Legal Affair Office to conduct legal procedures for violations to the laws and regulation. Also, the DNER has attorney from the Puerto Rico Department of Justice that provides legal advice and represents the DNER in court actions. The Puerto Rico Department of Justice can pursue civil, criminal, and/or administrative enforcement when cases are referred for enforcement.

D. Release Reporting, Investigation and Confirmation

The DCUST is responsible for the oversight of investigations of confirmed petroleum releases and any required site cleanup. The DCUST enforces the release reporting, investigation and confirmation requirements of the UST regulations.

The process of release reporting and corrective action follows 40 CFR Part 280 as identified in Subparts E and F. DNER follows the Federal Regulation in Part VI in the RCUST.

When a release occurs, the owner or operator must report the source and cause of the release. Sources may include, but are not limited to, the following:

- An underground storage tank
- Piping
- Dispensers

- Submersible turbine pump area
- Delivery problem

Causes may include, but are not limited to, the following:

- Spills
- Overfills
- Physical or mechanical damage
- Corrosion
- Installation problems

The following are typical steps that occur during release reporting and corrective action circumstances:

1. All suspected releases must be reported by the owner or operator to the DCUST within 24 hours.
2. All suspected releases must be investigated and confirmed by the DCUST within 7 days.
3. If the release is confirmed, the UST owner or operator must perform the initial response actions within 24 hours of confirmation. Such actions prevent further releases and mitigate fire hazards.
4. Within 20 days or another reasonable time period after release confirmation, the owner or operator must submit to the DCUST a report summarizing the initial response steps.
5. A site characterization report needs to be submitted within 45 days of release confirmation. This would include a free product removal report, if needed.
6. The owner or operator must submit a corrective action plan for the DCUST approval that responds to the contaminated soils, surface water, and/or ground water.
7. If a corrective action plan is prepared, the DNER must provide notice to the affected public and receive comments and address them before the corrective action plan can be approved.

The DNER must give public notice if implementation of the approved Corrective Action Plan does not achieve the established cleanup levels in the plan. DCUST address the reporting and cleanup of spills and overfills in the same manner as other confirmed releases unless this activity results in a release of less than 25 gallons, does not cause a sheen on nearby surface water, and is cleaned up within 24 hours. Hazardous substance releases are managed by the DCUST.

The DCUST employees work on site discovery and confirming suspected releases. Reporting of suspected releases not due to offsite impacts is handled by the DCUST. If an UST inspector suspects a release during an inspection, the inspector will work with the owner or operator to confirm or deny the suspected release and issued a Notification of Violation and Consent Order. If the release is confirmed, the UST inspector will turn the case over to the DCUST employees.

DCUST employees are on site during tank closure activities and require environmental contractors to sample certain locations such of the former UST tanks, piping run lines, and dispenser areas. For these activities the contractors used the Permanent Closure Guide for Underground Storage Tank Systems. The DCUST employees document and map the tank closure activities in their field notebook.

The DCUST employees use the UST database to track LUST site progress. The database contains known information on the release, such as the cleanup employee; who reported the release; how the release was detected; the source, cause, and amount of the release; which tank / piping run / dispenser had the release; what the receptors are; what cleanup method was used; and all corresponding dates for when the release occurred, when cleanup started, and when cleanup ended.

E. UST Permanent Closure

When permanently closing an UST System, owners or operators are required to notify the DNER 30 days' notice to intent or permanently closure. They do this through a Closure Permit Application. The DCUST evaluated the application and issued a Closure Permit. After issuing the Closure Permit, a 15-day notice of intent to start the closure activities must be submitted in order to allow the DNER's UST inspectors to schedule field inspections to oversight the activities. Following completion of the work about closure of the UST's the DNER requires the submission of a Closure Report. Receipt of the Closure Report allows the DNER to terminate active UST System in the UST database.

Although closing tanks in place is an acceptable method of closure, the DCUST discourages such actions unless the removal of the tank will compromise a structure. Lending institutions will rarely lend on a property with tanks still present, even if they are properly closed in place. Before approving a closure on site, DCUST inspector conducts a site inspection to confirm and document in writing that the justification is valid. After the inspection, is the justification is waived, a Closure Permit in Place will be issued. If the justification is not valid, DCUST will required to the owner or operator to modify the application for closure and removal of the UST System.

Once a permanently closure occurs and the Closure Report is evaluated the DCUST issues a No Further Action (NFA) letter. This letter states the owner or operator does not need to perform remediation in connection with the UST closure. If contaminants are discovered in unacceptable amounts, the UST site becomes a LUST site.

F. Financial Responsibility

The RCUST requires that the owners and operators of an UST System that stores regulated substances shall meet the requirements of financial responsibility for:

1. Taking corrective actions and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least the following per-occurrence amounts:

- a. For owners or operators of USTs that handle an average of more than 10,000 gallons of petroleum per month based on annual yield for previous calendar year: \$1 million.
 - b. For all other owners or operators of petroleum USTs: \$500,000.
2. Taking corrective actions and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the UST System that stores petroleum in at least the following annual aggregate amounts:
 - a. For owners and operators of 1 to 100 underground tanks and that store petroleum or its derivatives: \$1.0 million; and
 - b. For owners and operators of 101 or more underground tanks that store petroleum or its derivatives: \$2.0 million.

The Financial Responsibility requirements and Lender Liability follow 40 CFR Part 280 as identified in Subpart H and I. The Federal Regulation is follows in DNER Regulation, Parts X and XI.

G. Resource Information

Currently, the DCUST UST/LUST program has approximately 12 full-time employees; 11 in the DNER central office and 1 in the Mayaguez Regional Office. The UST/LUST program has the following sources of funding:

1. State and Tribal Assistance Grant (STAG)

The Federal STAG provides funding for database maintenance, program management, UST inspections, state program approval, outreach, and general program oversight. As of fiscal year 2018, this annual grant includes \$144,500 in Federal funds (75%) and \$48,167 in State funds (25%) for a total of \$192,667.

2. UST Prevention Program Grant

The Federal LUST Prevention Grant provides funding for Underground Storage Tank Compliance Act implementation, database maintenance, program management, and UST inspections. As of fiscal year 2018, this annual grant includes \$978,924 in Federal funds (75%) and \$326,310 in state funds (25%) for a total of \$1,305,234.

3. LUST Corrective Action Program Grant

The Federal LUST Trust Fund Grant provides funding for site investigations, enforcement and corrective action, emergency and complaint response, database maintenance, rulemaking, and public outreach. As of fiscal year 2018, this annual grant includes \$1,204,697 in Federal funds (90%) and \$133,855 in state funds (10%) for a total of \$1,338,552.

The total amount the Puerto Rico DNER has in UST and LUST assistance grants is \$2,643,786. On August 24, 2018, Puerto Rico DNER submitted the Disaster Relief

Appropriation Act (DRAA) Hurricane Harvey, Irma, and Maria Leaking Underground Storage Tank Trust Fund Corrective Action Program for the amount of \$3,500,000 in Federal funds (90%) and \$388,889 in state funds (10%) for a total of \$3,888,889.

H. Operators Training

The DNER requirements for Operators Training include the following:

1. The DCUST created an owner and operator training program for Class A, B and C Operators. The training courses for Class A, Class B and Class C operators, will be offered by the DCUST at the DNER facilities. These trainings courses comply with the minimum requirements of the RCUST and Subpart J of the Federal Regulation.
2. The owner or operator must designate a Class A, Class B, and Class C operator who meet the requirements of the RCUST. The Class A and Class B operators designated shall comply with the RCUST requirements within 30 days of assuming their functions. The Class C operators must be trained before assuming the obligations of a Class C operator.
 - a. Class A Operator: Individual who has the primary responsibility to operate and maintain the UST System, in accordance with applicable requirements established by the RCUST. The Class A Operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with the regulatory requirements.
 - b. Class B Operator: Individual who has the day to day responsibility of implementing applicable UST regulatory requirements established by DNER. The Class B Operator typically implements infield aspects of operation, maintenance and associated recordkeeping for the UST System.
 - c. Class C Operator: Individual responsible for initially addressing emergencies presented by a spill or release from a UST System. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.

3. The training, examination and certification is provided at the following costs:

Class Operator	Training	Exam	Training and Exam	Renewal of Certification
A and B	\$75.00	*\$100.00	\$175.00	\$100.00
A	\$75.00	*\$75.00	\$150.00	\$75.00
B	\$75.00	*\$50.00	\$125.00	\$75.00
C	\$50.00	*\$25.00	\$75.00	\$50.00
*It is not included an additional cost of \$25.00 for certification.				

4. Owners and Operators of underground storage tank systems must maintain a list of designated Class A, Class B and Class C operators and maintain records that show that the training and re-training as applicable, have been completed in accordance with the RCUST.

5. If their UST system is out of compliance, the trained operators must repeat the training no later 30 days from the DNER determines the facility is out of compliance except in one of the following situations:
 - a. Class A and Class B operators take annual refresher training Refresher training for Class A and Class B operators must cover all applicable requirements with the RCUST.
 - b. The DNER, at its discretion, waives this retraining requirement for either the Class A and Class B operator or both.
6. As part of the Operation Permit renewal process, owners or operators will present evidence of refresher training and re-certification of Class A, Class B and Class C Operators of UST Systems.

I. Compliance Inspections

The RCUST allow the DCUST inspectors to assess compliance, including the following:

- Notification
- Corrosion protection
- Overfill prevention in place and operational
- Spill prevention in place and operational
- Tank and piping release detection
- Reporting suspected releases
- Records of tank and piping repairs
- Secondary containment where required
- Financial responsibility
- Temporary closure

An inspection will be conducted at least once every 3 years and all inspections will be recorded on a Compliance Inspection Form.

J. Delivery Prohibitions

The RCUST states that it is unlawful to deliver to, deposit into, or accept a regulated substance into an ineligible UST. A tank *will* be ineligible if any of the following conditions that put the public health and safety at risk:

- Failure to appropriately operate or maintain the leak detection equipment;
- Failure to appropriately operate or maintain the leak prevention equipment, the overfill equipment , or the corrosion equipment;
- Failure to maintain financial responsibility;
- Failure to protect from corrosion a buried flexible metal connector;
- If the required leak prevention equipment has not been installed;
- If the required overfill prevention equipment has not been installed;
- If the required leak detection equipment has not been installed; or
- If the required corrosion protection equipment has not been installed.

When the DCUST technical personnel finds conditions that are in violations with the previous criteria, the Executive Director or the authorized official will determine that the UST is ineligible by issuing an Emergency Order which shall order the UST be red tagged. The red tag that fixed on the UST, will avoid the dispatch of the regulated substance that the UST System contains. The red tag will be fixed to the filling tube that does not comply with the regulatory criteria, it will be tamperproof, and will clearly identify that the UST does not meet the dispatch, filling, and acceptance product conditions.

Within five (5) days after notification of the Emergency Order, the owner or operator may submit a written document detailing his or her posture regarding such order, and how the noted deficiencies have been corrected. The written document shall include the reasons and basis, along with the corresponding evidence, as to why the UST System can be reclassified as eligible.

J. UST Website

DNER maintains a website that contains information of the DCUST Active LUST List, Inactive Lust List, documents and regulation. The Regulation for the Control of Underground Storage Tank is available at the website:

<http://www.agencias.pr.gov/agencias/jca/Documents/Leyes%20y%20Reglamentos/Reglamentos/Reglamentos/RCTAS%20Espa%C3%B1ol-Junio%2027%202018%20FINAL.pdf>

The Active LUST List, Inactive Lust List and other documents are available at the website:

<http://www.agencias.pr.gov/agencias/jca/areasprogramaticas/AreaCalidadAgua/Pages/default.aspx>